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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,591	01/23/2002	Frankie Farley		6404
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CYBERSTEEL CORPORATION 630 OCEAN AVE 3C BROOKLYN, NY 11226				
			EXAMINER HARBECK, TIMOTHY M	
			ART UNIT 3628	PAPER NUMBER

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683,591

Applicant(s)

FARLEY, FRANKIE

Examiner

Timothy M. Harbeck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Objections

Claims 1-3 are objected to because of the following informalities: There are a number of informalities associated with the claims. Among the informalities:

- If there are several claims, they shall be numbered consecutively in Arabic numerals. It appears as if there are 3 total claims in the application, however only claim 1 is numbered. Each separate claims needs a number to distinguish it from previous and/or subsequent claims
- Each claim may contain only one period at the conclusion of each claim. It appears claim 1 has at least two periods, one after alphanumeric (g) and one at the conclusion of the claim after alphanumeric (p).
- Claims 1-2 contain the trademark/trade name "CyberSTEEL". Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a particular index or indices and, accordingly, the identification/description is indefinite.

The applicant is hereby advised to review the claims in their entirety to ensure full adherence to the requirements established in the M.P.E.P.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each claim refers to both a "method and system." This is improper as it represents two separate statutory classes of invention. The claims can refer to a method or a system, but not both. For the purposes of examination the examiner has assumed that the claims refer to a method, as there is no recitation to any physical structure that would justify a system claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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Claim 3 is rejected under 35 U.S.C. 102(e) as being anticipated by Crookshanks (US 2006/0085322 A1).

Re Claim 3: Crookshanks discloses a system for transferring bill of materials data comprising:

- A first computer for performing computer aided design, said first computer having a computer aided design system application and a data subsystem application (Fig 22; Ref 160; paragraphs 0020-021)
- A second computer for performing Internet based futures and options trading control functions (Fig 22 Re 220; Contracts bidding on future contracts and options)
- A third computer having memory for storing the bill of materials in a database; and a networking circuitry for transferring the bill of materials data among said first second and third computers (Fig 22, Ref 300, 400, 500; "archive data, transfer data and documents).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims are rejected under 35 U.S.C. 103(a) as being unpatentable over Crookshanks in view of Kinney, Jr et al (hereinafter Kinney; US PAT 6,564,192 B1).

Re Claim 1: Crookshanks discloses a system for interfacing between a steel construction or manufacturing project design application in a CAD/CAM environment and an Internet based steel products procurement and futures and options trading system comprising the following steps

- Prompting a user in a CAD/CAM environment to browse and locate module of information stored in memory on a user database that reflects a bill of materials of a ferrous and non-ferrous metal construction or manufacturing project (0020-0021)
- Uploading via a communication channel said module of information to a host terminal in the same format as the user CAD/ CAM environment (0020-0021)
- Separating said module of information into distinct physical and chemical properties components before storing on the host CAD/CAM database (0020-0021)
- Designing futures and forwards contracts for each component using guidance from the project schedule and specification of the bill of materials (0022-0025)
- Store designed contracts in a CAD/CAM environment on a host database (0022)
- Prompting a user via a communication channel to login to the host database, then view, accept or seek amendment to designed contracts

- Displaying on a host terminal said contract on a computer device, represented by visual linked objects colored red, yellow, green, white, blue and orange, each color reflecting a specific characteristics of a contract (0029)
- A plurality of users login to a host database and using cursors controlled through the use of mouse devices, superimpose them over a specific visual link object triggering a pop-up interface that reflects a text description of the characteristics of a specific contract (0066)
- A plurality of users using cursor controlled through the use of mouse devices, superimposes over a specific area on the pop-up interface triggering a device driver that couples an operating system to a host computer system for the generation of programming values applied to a computer interface to establish an operating mode of predetermined sub-element of controlling device (0050-0051)

Crookshanks does not explicitly disclose the use of indicies to benchmark to settle transactions over the course of the contracts. Kinney discloses a system for differential index bidding in online auctions, wherein the originator of an auction specifies one or more indexes as the basis for establishing a competitive price point (Abstract and Column 4, lines 18-53). It would have been obvious to a person of ordinary skill in the art at the time of invention to include this teaching to the disclosure of Crookshanks so that in situations where prices of the contract are relatively volatile, the suppliers costs maintain a level of consistency relative to the overall market. This

allows suppliers to compete over the length of a contract and not have to estimate, too far in advance, where prices and costs will be in the future.

The references do not explicitly disclose the use of graphs and/or charts for tracking price and bid components of a bill of materials. Official Notice is taken that it is old and well known to utilize this information to make a visual representation of expected cost versus actual cost. Notoriously well known programs such as Microsoft Excel have performed these types of steps for years as a means to track overall performance of a project.

Re Claim 2: Crookshanks in view of Kinney discloses the claimed method supra and Crookshanks further discloses a computer aided design system having a first network circuitry containing a user terminal, a computer aided design system application at both user and host terminal and a data warehouse subsystem application at both user and host terminal (SEE Fig 22; 00147-0159), an Internet based computer system having a second networking circuitry and communication circuitry for transferring the bill of materials data from said first communication circuitry to said second networking circuitry, whereby the computer aided design system application is executed to locate the bill of materials, the data warehouse subsystem application is loaded from within the executed computer aided design system and the loaded data warehouse subsystem application is operated from within the executed computer aided design system application to retrieve the bill of materials from the user data warehouse subsystem storage and cause the communication circuitry to the bill of materials data (FIG 23).


Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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